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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,500	03/20/2001	Frank G. Logan III	65,096-087	1796

7590

05/13/2004

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EXAMINER

NGUYEN BA, HOANG VU A

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 05/13/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/812,500

Applicant(s)

LOGAN ET AL.

Examiner

Hoang-Vu A Nguyen-Ba

Art Unit

2122

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2001.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 17-36 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This action is responsive to the application filed March 20, 2001 and the preliminary amendment filed October 3, 2001.
2. Per Applicants' request, claims 1-16 are canceled and new claims 17-38 are presented. The Office notes that since new claims 17-38 are misnumbered, they have been renumbered 17-36, respectively. MPEP, 37 CFR 1.126. Renumbered claims 17-36 have been examined.

### *Priority*

3. The Office acknowledges that the instant application is indicated in the Utility Patent Application Transmittal sheet to be a continuation of U.S. Patent Application No. 09/024,773. However, Applicants are reminded that specific reference to the parent application must be made in the specification of the instant continuation application. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph.

### *Claim Objections*

4. Claim objected to because of the following informalities:

#### **Claim 1:**

- a. the term "based controller" at line 6 appears to be redundant;
- b. the term "display for adapted" at line 8 appears to be ungrammatical.

**Claims 27-29:** the term "in an other of the portions" although not ungrammatical, appears to be uncommon.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

5. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 18, 20, 24, 25, 27, 28, 29, 35 and 36 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claims 18 (line 2), 24 (line 4), 25 (line 1) recite the limitation “the program.” There is insufficient antecedent basis for this limitation in the claim.

8. Claim 26 recites the limitation “debugging window” in claim 36. There is insufficient antecedent basis for this limitation in the claim.

9. Claims 20 and 35 recite the limitation “the portions” at the end of the claim. It is unclear whether or not there is claimed more than two portions as is inferred by the recitation of the limitation “a split screen having two portions” in the same claim. For art rejection purposes, the limitation “one of the portions” is interpreted to mean – one of the two portions –.

Since claims 27-29 depend from claim 20, they inherently incorporate the same discrepancy and thus rejected for the same reason.

10. Claim 36 recites the limitation “forming a debugging window.” It is unclear whether the debugging window is one of the columns or one of the cells recited previously in claim 31. For art rejection purposes, the limitation “forming a debugging window” is construed to mean a step of forming a debugging window that is being one of the two portions of a split screen having two portions.

### *Double Patenting*

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 17-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,243,857. Although the conflicting claims are not identical, they are not patentably distinct from each other because application claims 17-36 define an obvious variation of the invention claimed in '857 patent.

Claims 1 and 15 of '857 patent as shown in the table below contain every element of claim 17 of the instant application and as such anticipate claim 17 of the instant application.

'857 Patent	Instant Application
<p>A machine programming and control system including means for editing and generating a continuous multi-block flowchart representing a program for controlling the operations of a machine, means for displaying the flowchart, continuous and contiguous portions of the flowchart containing more than one flowchart block being displayed, means for directly compiling the program from the flowchart, and means for executing the compiled program represented by the flowchart such that the machine is controlled in accordance with a displayed flowchart, comprising:</p>	<p>A machine programming, and control system, comprising: a machine</p>
<p>a computer for editing, debugging, and generating a continuous multi-block flowchart representing a program and for controlling the operations of a machine connected to said computer in accordance with said flowchart</p>	<p>a computer based controller coupled to the machine and being adapted to edit, debug, and generate a continuous multi-block flowchart and to control the operations of the machine in accordance with the flowchart</p>
<p>a display connected to said computer for editing and generating and including a screen divided into a plurality of columns each having a width and a plurality of rows each having a height, the display or displaying the flowchart with a plurality of blocks, each of said plurality of blocks being disposed within a cell defined by said columns and rows</p>	<p>a display coupled to the computer based controller based controller adapted to aid in editing, and generating the flowchart. the display including a screen divided into a plurality of columns and rows, the display adapted to display the flowchart with a plurality of blocks, each of the plurality of blocks being disposed within a cell defined by the columns and rows</p>
<p><b>said computer automatically displaying a first of said blocks in</b></p>	

<b>a first color and to display all remaining ones of said blocks in a second color.</b>	
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Claim 17 of '857 patent as shown in the table below contains every element of claim 31 of the instant application and as such anticipates claim 31 of the instant application.

<b>'857 Patent</b>	<b>Instant Application</b>
A method of machine programming and control including editing and generating a continuous multi-block flowchart representing a program for controlling operations of a machine, displaying the flowchart, continuous and contiguous portions of the flowchart containing more than one flowchart block being displayed, directly compiling the program from the flowchart, and executing the compiled program represented by the flowchart such that the machine is controlled in accordance with a displayed flowchart, the method comprising the steps of:	A method of machine programming and control, comprising the steps of
editing and generating the continuous multi-block flow chart representing a program for controlling the operations of a machine connected to the computer	editing and generating a continuous multi-block flow chart via a computer based controller, the flowchart representing a program for controlling the operations of a machine connected to the computer based controller
operating the machine in accordance with the flowchart	operating the machine in accordance with the flowchart

displaying a plurality of blocks on a screen divided into a plurality of columns and rows, the plurality of blocks comprising the flowchart, each of said plurality of blocks being disposed within a cell defined by said columns and rows	displaying a plurality of blocks on a screen divided into a plurality of columns and rows, the plurality of blocks comprising the flowchart, each of the plurality of blocks being disposed within a cell defined by the columns and rows
<b>automatically displaying a first of said blocks in a first color, all of said blocks dependent from said first of said blocks in a second color, and all remaining blocks in a third color</b>	

Furthermore, the '857 patent contains dependent claims 2-14, 16, 18 from claims 1, 15 and 17 respectively, dependent claims which anticipate dependent claims 18-30 and 32-36 from claims 17 and 31, respectively of the instant application.

In view of the above discussion, claims 17-36 of the instant application are unpatentable over claims 1-18 of U.S. Patent No. 6,243,857.

### *Conclusion*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Antony Nguyen-Ba, whose telephone number is (703) 305-0103. The examiner can normally be reached on Tuesday - Friday from 6:15 – 3:45 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam, can be reached at (703) 305-4552.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.



Application/Control Number: 09/812,500  
Art Unit: 2122

Page 8

Central Fax Number

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*Hoang Anthony Nguyen Ba*

**ANTONY NGUYEN-BA  
PRIMARY EXAMINER**

Art Unit 2122

May 11, 2004